

AUG 16 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****V.****RAY ANTHONY CERVANTES,****Defendant - Appellant.****No. 05-50485****D.C. No. CR-03-00836-GHK****MEMORANDUM***

**Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding**

**Argued and Submitted June 6, 2006
Pasadena, California**

Before: THOMAS and GOULD, Circuit Judges, and SCHWARZER*, District
Judge.**

**Ray Cervantes appeals his guilty plea conviction for being a felon in
possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1), his
sentence pursuant to that conviction, and his conviction for possession of an**

*** This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.**

***** The Honorable William W Schwarzer, Senior United States District
Judge for the Northern District of California, sitting by designation.**

unregistered firearm, in violation of 26 U.S.C. § 5861(d). We affirm. Because the parties are familiar with the factual and procedural history of this case, we need not recount it here.

1. Cervantes' claim that 18 U.S.C. § 922(g) is unconstitutional is precluded by Supreme Court precedent. *Scarborough v. United States*, 431 U.S. 563 (1977); *see also United States v. Cortes*, 299 F.3d 1030, 1037 n.2 (9th Cir. 2002) ("Until the Supreme Court tells us otherwise . . ., we follow *Scarborough* unwaveringly.").

2. The district court did not err in its pronouncement of the sentence. The district court considered each of the 18 U.S.C. § 3553(a) factors and explained its reasons for the sentence imposed as required by *United States v. Booker*, 543 U.S. 220 (2005). The district court also properly resolved the factual disputes at sentencing applying a preponderance of the evidence standard. *United States v. Kilby*, 443 F.3d 1135, 1140 (9th Cir. 2006) (citing *United States v. Ameline*, 409 F.3d 1073, 1086 (9th Cir. 2005) (en banc)).

3. Given the government's concession at oral argument that the imposition of drug testing as part of the order of supervised release in the sentence was related to treatment, and that any testing during the period of supervised release unrelated to treatment was not part of the sentence imposed, we find no error in the

imposition of the sentencing condition pursuant to *United States v. Stephens*, 424 F.3d 876 (9th Cir. 2005).

AFFIRMED.